

**BOARD OF APPEALS CASE NO. 5260**

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**BEFORE THE**

**APPLICANTS: James & Donna Renner**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to construct an addition  
over existing stairs within the required side yard  
setback; 1312 Allenby Court, Bel Air**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 5/8/02 & 5/15/02**

**HEARING DATE: June 24, 2002**

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**Record: 5/10/02 & 5/17/02**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, James and Donna Renner, are requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to construct an addition over existing areaway stairs within the required ten (10) foot side yard setback in an R2/Urban, Residential/Conventional with Open Space District.

The subject parcel is located at 1312 Allenby Court, Bel Air, Maryland 21014 in the Third Election District, and is more particularly identified on Tax Map 41, Grid 4D, Parcel 644, Lot 57. The parcel contains approximately 0.249 acres more or less.

The Applicant, James Renner, appeared and testified that he and the Co-Applicant, Donna Renner, are the owners of the subject property. He stated that he had read the Department of Planning and Zoning Staff Report, and had no changes or corrections to the information contained therein.

Mr. Renner described his property as a .25 acre rectangular lot with R2 zoning. The property is improved by a two-story single family dwelling with an attached two-car garage. The property is also improved by a one-story rear addition with a concrete patio. The rear yard is enclosed by a split rail fence. According to the witness, the contractor who built the home in 1984, placed the basement access stairway 8.2 feet from the side property line, as opposed to the required 10 feet. There is a considerable amount of mature vegetation growing beside the areaway. The wind blows debris from that vegetation into the stairwell, clogging the bottom drain. The clogged drain causes water to accumulate in the stairwell, and flood the Applicants' basement.

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The witness testified that he is proposing to construct an 8 foot high, by 5 foot wide, by 14 foot long enclosure over the areaway to keep debris from blowing in and blocking the drain. Because the existing stairs are only 8.2 feet from the property line, the outside wall of the enclosure will also be 8.2 feet from the property line. This would cause an encroachment of approximately 1.2 feet into the required side yard setback.

The witness introduced a letter from Amyclae Estates Community Association, (Applicants' Exhibit No.1), stating that its Design Review Board had approved the design of the proposed addition, and, approved his request to enclose the basement access stairway. He then introduced a letter (Applicant's Exhibit 2) from the adjacent property owners closest to the proposed enclosure. In that letter, which is dated April 15, 2002, the neighbors indicate that they support the granting of the requested variance. Finally, the Applicant introduced a sketch of the proposed enclosure. The sketch (Applicants' Exhibit 3) shows that the addition would be constructed using the same siding and roofing as that found on the existing home.

Mr. Renner testified that his property is located in Amyclae Estates, and that at least two or three other homes in that neighborhood have similar enclosures over their basement access steps. He also stated that, in his opinion, the granting of the requested variance will not have any adverse impact on neighboring properties. His closest neighbors support his request, and there is mature vegetation present between the proposed addition and the closest adjacent property.

The Department of Planning and Zoning recommended approval of the subject request in its May 24, 2002 Staff Report, stating that:

“The Department finds that the subject property is unique. There is mature vegetation between the proposed enclosure and the adjacent house. The enclosure shall match the siding of the existing dwelling... The request, if approved, should not have an adverse impact on the adjacent properties or the intent of the Code.”

No witnesses appeared in opposition to the requested variance.

**CONCLUSION:**

The Applicants, James and Donna Renner, are requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to construct an addition over existing areaway stairs within the required ten (10) foot side yard setback in an R2/Urban Residential/Conventional with Open Space District.

Section 267-36B, Table V: Design Requirements for Specific Uses in an R2/Urban Residential District provides for a minimum ten (10) foot side yard width. The existing stairway, reduces the side yard width to 8.6 feet at its closest point from the property line. The proposed addition will not encroach further into the setback than the existing stairway.

Section 267-11 of The Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals set forth a two-prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This two prong test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique only if there is a finding that a peculiar characteristic or unusual circumstance, relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721.

If the subject property is unique, the trier of fact may proceed to the second prong of the test. The second prong involves a determination as to whether literal enforcement of the

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zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The original placement of the existing home provided a side yard width of only 8.6 feet from the outside wall of the basement access stairs. Those stairs are the only means of access to the basement from outside of the home. The Hearing Examiner finds that literal enforcement of the Code in this case would result in both practical difficulty and unreasonable hardship for the Applicants. There is a considerable amount of mature vegetation adjacent to the basement access stairway. The wind blows pieces of that vegetation into the areaway, causing the drain to clog, and resulting in flooding of the Applicant's basement. The only way to stop the basement from flooding is to construct an enclosure over the stairwell to keep out the blowing debris.

Finally, the Hearing Examiner finds that the granting of the requested variance will not have any adverse impact on, or be substantially detrimental to adjacent properties, or materially impair the purpose of this Code or the public interest. There are several other homes within Amyclae Estates with similar additions. The proposed construction is architecturally compatible with both the existing home, and with other properties in the neighborhood. The community association has approved both the design of the enclosure, and Applicants' request to construct the addition. The closest adjacent property owners are in agreement with, and support the granting of, the requested variance. In addition, there is existing mature vegetation available to screen the proposed addition from view by adjacent property owners.

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The Hearing Examiner recommends approval of the Applicants' request, subject to the following conditions:

1. That the Applicants obtain all necessary permits and inspections for the proposed construction.
2. That the Applicants not encroach further into the setback than the distance requested herein.

**Date JULY 23, 2002**

**Rebecca A. Bryant  
Zoning Hearing Examiner**